

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

BAUSCH & LOMB INCORPORATED and  
WYETH LLC,

Plaintiffs,

v.

ORDER

13-CV-6498

VITAMIN HEALTH, INC.,

Defendant.

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Currently pending before the Court are: (1) Vitamin Health's motion to exclude the expert testimony of Michael E. Tate (Docket # 246); (2) Bausch & Lomb's motion to exclude the expert testimony of Jon Tepp (Docket # 249); (3) Vitamin Health's motion to exclude the expert testimony of Susan B. Bressler (Docket # 251); (4) Vitamin Health's motion to exclude the expert testimony of Elizabeth J. Johnson (Docket # 253); (5) Bausch & Lomb's motion to exclude certain expert testimony of Jerry Rapp (Docket # 254); and (6) Bausch & Lomb's motion to exclude Jerome Sherman from testifying at trial (Docket # 255). The parties submitted responses on May 20, 2016, and replies were filed on May 27, 2016. On July 15, 2016, after reviewing the parties' submissions, the Court issued a ruling on the record, reserving decision on Bausch & Lomb's motion to exclude certain expert testimony of Jerry Rapp and denying the rest. Accordingly, and for the reasons set forth more fully in the Court's oral decision, it is hereby

**ORDERED** that Vitamin Health's motion to exclude the expert testimony of Michael E. Tate (Docket # 246) is **denied**. Tate will be permitted to testify as to damages subject to cross-examination at trial; and it is further

**ORDERED** that Bausch & Lomb's motion to exclude the expert testimony of Jon Tepp (Docket # 249) is **denied**. Tepp will be permitted to testify as to damages subject to cross-examination at trial; and it is further

**ORDERED** that Vitamin Health's motion to exclude the expert testimony of Susan B. Bressler (Docket # 251) is **denied**. Vitamin Health's objections to Bressler's testimony have been resolved by this Court's claim construction, and Bressler will be permitted to testify at trial subject to cross-examination; and it is further

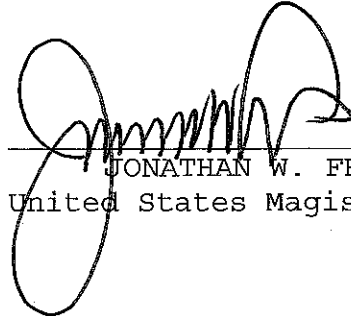
**ORDERED** that Vitamin Health's motion to exclude the expert testimony of Elizabeth J. Johnson (Docket # 253) is **denied**. Johnson will be permitted to testify at trial subject to cross-examination; and it is further

**ORDERED** that Bausch & Lomb's motion to exclude Jerome Sherman from testifying (Docket # 255) is **denied**. Sherman will be permitted to testify as to the validity of the patents subject to cross-examination. Sherman will not be permitted to rely on undisclosed publications in his testimony; and its further

**ORDERED**, having been informed by counsel for Vitamin Health that Jerry Rapp will no longer be testifying as an expert witness

at trial, that Bausch & Lomb's motion to exclude certain expert testimony of Jerry Rapp (Docket # 254) is moot.

**SO ORDERED.**



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JONATHAN W. FELDMAN  
United States Magistrate Judge

Dated: July 28, 2016  
Rochester, New York